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Wizz Air

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### **Klage over Wizz Air for manglende overholdelse af forordning (EF) nr. 261/2004 af 11. februar 2004 om flypassagerrettigheder**

I henvendelse af 10-10-2022 har John Roy Vesterholm klaget til Trafikstyrelsen over Wizz Air for manglende overholdelse af forordning (EF) nr. 261/2004 i forbindelse med en forsinkelse. John Roy Vesterholm har gjort krav på kompensation og refusion af udgifter for følgende:

- mad og drikke (forplejning)

Følgende passager(er) er omfattet af denne klage:

- John Roy Vesterholm
- Resmija Vesterholm

*(herefter passagererne)*

#### **Afgørelse**

Trafikstyrelsen meddeler medhold.

#### **Retsgrundlag**

Det fremgår af EU-domstolens retspraksis i de forenede sager C-402/07 og C-432/07 (Sturgeon), at passagerer, der har oplevet en forsinkelse på mindst 3 timer, har ret til:

- Kompensation i medfør af artikel 5, stk. 1, litra c), med mindre der forelå usædvanlige omstændigheder for flyforsinkelsen, jf. stk. 3

Det følger af artikel 6, stk. 1, at passagerer, der har oplevet en forsinkelse kan have ret til:

- Forplejning i henhold til artikel 9, stk. 1, litra a)

Det fremgår af forordning (EF) nr. 261/2004 artikel 5, stk. 3, at det transporterende luftfartsselskab ikke er forpligtet til at udbetale kompensation, hvis det kan godtgøres, at forsinkelsen skyldtes usædvanlige omstændigheder. Dette indebærer, at hændelsen ikke var et led i luftfartsselskabets

sædvanlige aktivitetsudøvelse, og at hændelsen lå uden for luftfartsselskabets faktiske kontrol.

### **Begrundelse**

Det fremgår af oplysningerne i sagen, at passagererne skulle rejse med Wizz Air, W67713 den 01-10-2022 fra Skopje Intl Airport, SKP til Copenhagen Airport, CPH. Flyet blev imidlertid forsinket, og passagererne ankom til Copenhagen Airport, CPH mindst tre timer senere end planlagt.

Da parterne ikke er enige om, hvad passagererne har ret til, er styrelsen blevet bedt om at vurdere tvisten.

I forbindelse med klagen har styrelsen anmodet Wizz Air om kommentarer og relevant dokumentation for omstændighederne vedrørende forsinkelsen. Styrelsen sendte et høringsbrev den 18-10-2022, og en rykkerskrivelse blev sendt den 14-12-2022. Wizz Air har dog ikke svaret på disse henvendelser.

Styrelsen skal udtale følgende:

Wizz Air har ikke svaret på styrelsens henvendelser og derfor ikke godtgjort, at forsinkelsen skyldtes usædvanlige omstændigheder i henhold til forordning (EF) nr. 261/2004, artikel 5, stk. 3.

På dette foreliggende grundlag finder Trafikstyrelsen, at passagererne er berettigede til at modtage de krav, der er gjort gældende i klagen.

Da den pågældende rejses distance var på mellem 1500 og 3500 km, er passagererne berettigede til en kompensation på EUR 400 hver.

Trafikstyrelsen skal derfor anmode Wizz Air om at udbetale i alt EUR 800 i kompensation og MKD 405 i refusion.

Wizz Air skal inden 4 uger fra dags dato udbetale ovenstående beløb. jf. bekendtgørelse nr. 1549 af 16. december 2013 § 3, stk. 2.

John Roy Vesterholm kan kontakte Trafikstyrelsen, hvis ovenstående beløb ikke er modtaget inden 4 uger fra dags dato. Det må herefter forventes, at styrelsen vil anmode anklagemyndigheden om at rejse tiltale mod Wizz Air for manglende efterlevelse af styrelsens afgørelse, jf. bekendtgørelse nr. 1549 af 16. december 2013 § 3, stk. 2, jf. § 4, stk. 2.

**Klageadgang**

Denne afgørelse er bindende og kan ikke indbringes for transportministeren eller anden administrativ myndighed, jf. § 25 i bekendtgørelse nr. 2432 af 14. december 2021 om Trafikstyrelsens opgaver og beføjelser, klageadgang og kundgørelse af visse af Trafikstyrelsens forskrifter. Hvis parterne i sagen er uenige i afgørelsen, kan sagen forelægges for de civile domstole.

Venlig hilsen

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### **Complaint against Wizz Air for an infringement of Regulation (EC) No 261/2004 of 11 February 2004 regarding flight passenger rights**

On 10-10-2022, John Roy Vesterholm has filed a complaint with the Danish Civil Aviation and Railway Authority against Wizz Air regarding an infringement of Regulation (EC) No 261/2004 in connection with a delay. John Roy Vesterholm has claimed compensation and refund of expenses held in connection to:

- Refreshments (care)

The following passengers are covered by this complaint:

- John Roy Vesterholm
- Resmija Vesterholm

*(henceforth the passengers)*

#### **Decision**

The Danish Civil Aviation and Railway Authority has decided in favour of the complainant.

#### **Legal basis**

According to the ruling of the EU Court of Justice in the joined cases C-402/07 and C-432/07 (Sturgeon), flight passengers who experience a delay of more than 3 hours are entitled to:

- Compensation in accordance with Article 5(1)(c), unless the delay was caused by extraordinary circumstances cf. Article 5(3).

According to Article 6(1), passengers may be entitled to:

- Care in accordance with Article 9(1)(a)

It appears from Regulation (EC) No 261/2004 Article 5 (3) that the operating carrier is not obligated to pay compensation, if the operating carrier can prove that the delay was caused by extraordinary circumstances. This

entails that the events were not inherent in the normal exercise of the activity of the air carrier and were outside the air carrier's actual control.

### **Grounds**

It appears from the submitted material that the passengers were scheduled to fly with Wizz Air, W67713 on 01-10-2022 from Skopje Intl Airport, SKP to Copenhagen Airport, CPH. However, the flight was delayed, and the passengers arrived to Copenhagen Airport, CPH more than three hours later than scheduled.

In connection with the complaint, the Danish Civil Aviation and Railway Authority has requested comments and documentation from the air carrier on 18-10-2022 and sent a reminder on 14-12-2022. However, the air carrier has not responded to these requests.

The Danish Civil Aviation and Railway Authority states the following:

#### *Regarding compensation*

As mentioned, Wizz Air has not responded to the Authority's request for comments and documentation and has thus not proved that the delay was caused by extraordinary circumstances.

On the present basis, the Danish Civil Aviation and Railway Authority finds that the passengers are entitled to receive what is claimed.

As the journey in question was between 1500 and 3500 km, the passengers are entitled to a compensation of EUR 400 each.

The Danish Civil Aviation and Railway Authority requests Wizz Air to pay in total EUR 800 in compensation and MKD 405 in reimbursement.

Wizz Air shall, within 4 weeks from today pay the abovementioned amount, cf. Executive Order no 1549 of December 16, 2013 section 3(2).

John Roy Vesterholm may contact the Danish Civil Aviation and Railway Authority if the abovementioned amount is not received within 4 weeks from today. It may then be expected that the Danish Civil Aviation and Railway Authority will bring the case before the Public Prosecution, with the request to impose a fine on Wizz Air for lack of observance of the decision made by the Danish Transport, Construction and Housing Authority, cf. Executive Order no 1549 of December 16, 2013, section 4(2).

**Complaint handling**

This decision is binding and cannot be brought before the Danish Minister for Transport or any other administrative authority, cf. section 25 of Executive Order no. 2432 of 14 December 2021 on Danish Civil Aviation and Railway Authority's tasks and powers, right to appeal and announcement of certain provisions from the Danish Civil Aviation and Railway Authority. If the parties involved disagree with the decision, the case may be brought before the civil courts.

Best regards

Anna Smed  
The Danish Civil Aviation and Railway Authority